IN THE HIGH COURT OF BOMBAY AT GOA, PANAJI-GOA

APPEAL FROM ORDER NO. 64 OF 2004

Mr. Lawrence Jose Fernandes,
Major of age, Married,
Resident of House No. 921,
Madhlamaj-Mandrem, Goa. .... Appellant

Versus

1. Mr. Ramakant Yeshwant Pednekar,
2. Mrs. Ramakant R. Pednekar,
3. Mr. Chandrakant Yeshwant Pednekar,
4. Mrs. Chandrakant Y. Pednekar,
   All major of age,
   Residents of H. No. 569, Madhlamaj,
   Mandrem, Pernem, Goa.
5. Mrs. Vasudev Hari Pednekar,
6. Mr. Eknath Hari Pednekar,
7. Mrs. Eknath H. Pednekar,
   All major of age,
   Residents of H. No. 656,
   Madhlamaj, Mandrem, Pernem, Goa.
8. Mr. Salvador D'Souza,
9. Mrs. Salvador D'Souza,
   Both major of age,
   Residents of H.No. 653,
   Madhlamaj, Mandrem, Pernem, Goa.
10. Mr. Rauji Laximan Gadekar,
11. Mrs. Rauji L. Gadekar,
    Both major of age,
    Residents of H.No. 744,
    Marathawada Paatieche Bag,
    Mandrem, Pernem, Goa.
12. Mr. Vasudev Rajendra Deshprabhu,
    major of age, married,
    H.No. Not known,
    Naner Vaddo, Pernem, Goa.

13.Mr. Sitaram Manguesh Mandrekar,
major of age, married,
resident of 11/295,
Bakul new M-9-G Colony,
Bandre (East),
Mumbai 51. .... Respondents

Shri S.D. Lotlikar, Sr. Advocate with Mr. R. Menezes, Advocates for the Appellant.

Mr. D. Pangam, Advocate for Respondents No. 1 to 12.

CORAM : **P.V. KAKADE, J.**

DATE : **14th NOVEMBER, 2006**

ORAL JUDGMENT:

Heard the learned Counsel for both the parties. Perused the record.

2. The appellant has challenged the order passed by the Civil Judge, Senior Division, Mapusa rejecting the temporary injunction application filed by him.

3. The plaintiff had instituted the suit for permanent injunction, restraining the defendants no. 1 to 11, their agents, representatives,

servants or any other person acting for and on their behalf, from interfering with the possession of the plaintiff, in the suit property identified as plot B, admeasuring 26065 sq. mts. forming part of survey no. 308/1 in any manner whatsoever. According to the plaintiff, the suit land is a separate land and the defendants had no right to interfere with the same, but they had started interfering with the possession of the plaintiff and hence, the suit came to be filed. The application for temporary injunction was also filed alongwith the suit, which was after hearing both the parties adjudicated, and the lower Court came to the conclusion that the plaintiff was not entitled for temporary injunction.

4. After hearing both the parties and perusing the entire contents of the order, it is obvious that the lower Court has not only not properly appreciated the evidence on record but has not even referred to the documentary evidence which was produced by the plaintiff in support of his case. In other words, it appears that there is no proper application of mind of the learned trial Judge while adjudicating the said interim application and, therefore, I am of the considered view, that this is a fit matter to remand to the trial Court for adjudication of the interim relief application afresh on the basis of available evidence on record.

5. Hence, the appeal is allowed. The judgment and order passed by the Civil Judge, Senior Division, Mapusa refusing to issue temporary injunction is hereby set aside and the matter is remanded to the trial Court for adjudication afresh to the application of temporary injunction which would be adjudicated after hearing both the parties, within a period of 3 months from the date of receipt of the writ of this Court.

6. With these directions, the appeal stands disposed of with no order as to costs.

P.V. KAKADE, J.

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